

(b) In reaching the findings, the Hearing Officer shall consider the demeanor of the witnesses who have testified at the hearing, the probability or likelihood of the truth of their testimony, their credibility, and the authenticity and accuracy of documentary evidence, or lack of evidence on any material points in issue. If the individual is, or may be, handicapped by the non-disclosure to the individual of confidential information or by lack of opportunity to cross-examine confidential informants, the Hearing Officer shall take that fact into consideration. Possible impact of the loss of the individual's access authorization upon the DOE program shall not be considered by the Hearing Officer.

(c) The Hearing Officer shall make specific findings based upon the record as to the validity of each of the allegations contained in the notification letter and the significance which the Hearing Officer attaches to such valid allegations. These findings shall be supported fully by a statement of reasons which constitute the basis for such findings.

(d) The Hearing Officer's decision shall be based on the Hearing Officer's findings of fact. If, after considering all of the factors in light of the criteria set forth in this subpart, the Hearing Officer is of the opinion that it will not endanger the common defense and security and will be clearly consistent with the national interest to grant or reinstate access authorization for the individual, the Hearing Officer shall render a favorable decision; otherwise, the Hearing Officer shall render an unfavorable decision. Within 15 calendar days of the Hearing Officer's written decision, the Hearing Officer shall provide copies of the decision and the administrative record to the Manager and the Director, Office of Safeguards and Security.

[59 FR 35185, July 8, 1994, as amended at 66 FR 47065, Sept. 11, 2001]

**§ 710.28 Action on the Hearing Officer's decision.**

(a) Within 10 calendar days of receipt of the decision and the administrative record, unless an extension of time is granted by the Director, Office of Safe-

guards and Security, the Manager shall:

(1) Notify the individual in writing of the Hearing Officer's decision;

(2) Advise the individual in writing of the appeal procedures available to the individual in paragraph (b) of this section if the decision is unfavorable to the individual;

(3) Advise the individual in writing of the appeal procedures available to the Manager and the Director, Office of Safeguards and Security, in paragraph (c) of this section if the decision is favorable to the individual; and,

(4) Provide the individual and/or counsel or representative, a copy of the Hearing Officer's decision and the administrative record.

(b) If the Hearing Officer's decision is unfavorable to the individual:

(1) The individual may file with the Director, Office of Safeguards and Security, a written request for further review of the decision by the Appeal Panel along with a statement required by paragraph (e) of this section within 30 calendar days of the individual's receipt of the Manager's notice;

(2) The Director, Office of Safeguards and Security may, for good cause shown, extend the time for filing a request for further review of the decision by the Appeal Panel at the written request of the individual provided the request for an extension of time is filed by the individual within 30 calendar days of receipt of the Manager's notice;

(3) The Hearing Officer's decision shall be considered final if the individual does not: file a written request for a review of the decision by the Appeal Panel or for an extension of time to file a written request for further review of the decision by the Appeal Panel in accordance with paragraphs (b)(1) or (b)(2) of this section; or, file a written request for a further review of the decision by the Appeal Panel after having been granted an extension of time to do so.

(c) If the Hearing Officer's decision is favorable to the individual, within 30 calendar days of the individual's receipt of the Manager's notice:

(1) The Manager or the Director, Office of Safeguards and Security, may file a written request for further review of the decision by the Appeal Panel

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along with the statement required by paragraph (e) of this section;

(2) The Director, Office of Security Affairs, may, at the written request of the Manager or Director, Office of Safeguards and Security, extend the time for filing a request for further review of the decision by the Appeal Panel; or

(3) The Manager, with the concurrence of the Director, Office of Safeguards and Security, shall grant or reinstate the individual's access authorization.

(d) A copy of any request for further review of the individual's case by the Appeal Panel filed by the Manager or the Director, Office of Safeguards and Security, shall be provided to the individual by the Manager.

(e) The party filing a request for review of the individual's case by the Appeal Panel shall include with the request a statement identifying the issues on which it wishes the Appeal Panel to focus. A copy of such statement shall be served on the other party, who may file a response with the Appeal Panel within 20 calendar days of receipt of the statement.

[66 FR 47065, Sept. 11, 2001]

### § 710.29 Final appeal process.

(a) The Appeal Panel shall be convened by the Director, Office of Security Affairs, to review and render a final decision in an access authorization eligibility case referred by the individual, the Manager, or the Director, Office of Safeguards and Security, in accordance with §§ 710.22, 710.28, and 710.32.

(b) The Appeal Panel shall consist of three members, each of whom shall be a DOE Headquarters employee, a United States citizen, and hold a DOE Q access authorization. The Director, Office of Security Affairs, shall serve as a permanent member of the Appeal Panel and as the Appeal Panel Chairman. The second member of the Appeal Panel shall be a DOE attorney designated by the General Counsel. The head of the DOE Headquarters element who has cognizance over the individual whose access authorization eligibility is being considered may designate an employee to act as the third member on the Appeal Panel; otherwise, the

third member will be designated by the Chairman. Only one member of the Appeal Panel shall be from the security field.

(c) In filing a written request for a review by the Appeal Panel in accordance with §§ 710.22 and 710.28, the individual, or the counsel or representative, shall identify the relevant issues and may also submit any relevant material in support of the individual. The individual's written request and supportive material shall be made a part of the administrative record. The Director, Office of Safeguards and Security, shall provide staff support to the Appeal Panel as requested by the Director, Office of Security Affairs.

(d) Within 15 calendar days from the date of receipt of a request for a review of a case by the Appeal Panel, the Director, Office of Security Affairs, shall:

(1) Request the General Counsel to designate an attorney who shall serve as an Appeal Panel member;

(2) Either request the head of the cognizant DOE element to designate, or himself designate, an employee from outside the security field who shall serve as the third member of the Appeal Panel; and

(3) Arrange for the Appeal Panel members to convene to review the administrative record or provide a copy of the administrative record to the other Appeal Panel members for their independent review.

(e) The Appeal Panel may initiate an investigation of any statement or material contained in the request for an Appeal Panel review and use any relevant facts obtained by such investigation in the conduct of the final decision process. The Appeal Panel may solicit and accept submissions from either the individual or DOE officials that are relevant to the final decision process and may establish appropriate time frames to allow for such submissions. The Appeal Panel may also consider any other source of information that will advance the final decision process, provided that both parties are afforded an opportunity to respond to all third party submissions. All information obtained by the Appeal Panel under this section shall be made a part of the administrative record.